

SETTLEMENT AGREEMENT BETWEEN
MISSOURI REAL ESTATE COMMISSION AND WINKLER HOMES LLC AND MARISE WINKLER

Come now Winkler Homes LLC ("Winkler Homes") and Marise Winkler ("Winkler"), collectively "Licensees," and the Missouri Real Estate Commission ("Commission") and enter into this settlement agreement for the purpose of resolving the question of whether Winkler Homes' license as a real estate association and Winkler's license as a real estate broker associate will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensees' licenses, and, additionally, the right to a disciplinary hearing before the Commission under § 621.110, RSMo.

Licensees acknowledge that Licensees understand the various rights and privileges afforded Licensees by law, including the right to a hearing of the charges against Licensees; the right to appear and be represented by legal counsel; the right to have all charges against Licensees proven upon the record by a preponderance of the evidence; the right to cross-examine any witnesses appearing at the hearing against Licensees; the right to present evidence on Licensees' own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensees and, subsequently, the right to a disciplinary hearing before the Commission at which time Licensees may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against Licensees' licenses. Being aware of these rights provided them by operation of law, Licensees knowingly and voluntarily waive each and every one of these rights and freely enter into this Settlement Agreement and agree to abide by the terms of this document, as they pertain to Licensees.

Licensees acknowledge that Licensees have received a copy of the documents relied upon by the Commission in determining there was cause to discipline Licensees' licenses, along with citations to law and/or regulations the Commission believes were violated.

For the purpose of settling this dispute, Licensees stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Commission that Licensee Winkler Homes' real estate association license, numbered 2014027659 and Winkler's broker associate license, numbered 1999004829 are

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

subject to disciplinary action by the Commission in accordance with the provisions of Chapter 621 and §§ 339.010-339.205 and 339.710-339.855, RSMo.

Joint Stipulation of Facts and Conclusions of Law

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo, for the purpose of licensing all persons engaged in the practice as a real estate broker or salesperson in this state. The Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of Sections 339.010-339.205 and 339.710-339.855, RSMo.

2. Licensee, Winkler Homes LLC, holds a real estate association license from the Commission, license number 2014027659. The Commission issued Winkler Homes' license on August 5, 2014. Winkler Homes' license expires June 30, 2020. Winkler Homes' license was current and active at all times relevant herein. Licensee Marise Winkler is the designated broker for Winkler Homes LLC.

3. Licensee, Marise Winkler, holds an active real estate broker associate license from the Commission, license number 1999004829. The Commission issued Winkler's broker associate license on September 4, 1998. Winkler's broker associate license expires June 30, 2020. Winkler's broker associate license was current and active at relevant times described below.

4. The Commission received information that licensee Lashanda Hafenbrack, a salesperson for Winkler Homes LLC, had a gap where her license was not current and active between September 30, 2016 and September 22, 2017. Based on that information, the Commission initiated an investigation.

5. The Commission's investigation revealed:

- a. Hafendbrack, when interviewed, acknowledged that she had a gap when her license was not active due to "confusion about renewing her license" and "having not received the renewal." Hafenbrack attributed not receiving the renewal to the fact that she had not updated the Commission with her new address.
- b. Licensee Marise Winkler, Hafenbrack's designated broker, stated she was not aware of the gap in Hafenbrack's license being active because she was distracted by family issues and did not notice it. Winkler stated there was confusion concerning her renewal.

- c. Licensee Winkler stated that Hafenbrack conducted four real estate transactions on behalf of Winkler Homes LLC when her license was not current and active, earning total commission of \$6,817.50.

6. Licensees' conduct, as described in paragraphs 4 and 5 above, allowing the provision of real estate services without a valid license, constitutes cause to discipline Licensees' licenses.

7. Section 339.020, RSMo, states:

It shall be unlawful for any person, partnership, limited partnership, limited liability company, association, professional corporation, or corporation, foreign or domestic, to act as a real estate broker, real estate broker-salesperson, or real estate salesperson or to advertise or assume to act as such without a license first procured from the commission.

8. Regulation 20 CSR 2250-4.020(2) states, in relevant part:

...

Until a new license is procured, the holder of an expired license shall not perform any act for which a license is required.

9. Regulation 20 CSR 2250-8.020(1) states, in relevant part:

Individual brokers, designated brokers, and office managers/supervising brokers shall be responsible for supervising the real estate related activities including the protection of any confidential information as defined under 339.710.8, RSMo, of all licensed and unlicensed persons associated with them, whether in an individual capacity or through a corporate entity, association or partnership.

10. Cause exists for the Commission to take disciplinary action against Licensees' licenses under § 339.100.2(7), (15), (19) and (23), RSMo, which states in pertinent part:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621, RSMo, against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

...

(7) Paying a commission or valuable consideration to any person for acts or services performed in violation of sections 339.010 to 229.180 and sections 339.710 to 339.860;

...

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860*, or any lawful

rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860*;

...

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence;

...

(23) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated under sections 339.010 to 339.180 and section 339.710 to 339.860* who is not registered and currently eligible to practice under sections 339.010 to 339.180 and sections 339.710 to 339.860*[]

Joint Agreed Disciplinary Order

11. Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Commission in this matter under the authority of §§ 536.060, 621.045.4 and 621.110, RSMo.

12. The terms of discipline shall include that **Licensees shall pay a total civil penalty in the amount of \$750.00 pursuant to § 339.100.3, RSMo.** The civil penalty shall be made by certified check payable to the "Missouri Real Estate Commission" and mailed to the Missouri Real Estate Commission, PO Box 1339, Jefferson City, MO 65102-1339. Said check must be postmarked or hand delivered within 60 days of the effective date of this Settlement Agreement. Funds received pursuant to this Order shall be handled in accordance with Section 7 of Article IX of the Missouri Constitution and Section 339.205.8, RSMo. Respondents' failure to pay the full amount of the \$750.00 civil penalty within sixty days of the effective date of this Order shall constitute a violation of this Order.

13. This Agreement does not bind the Commission or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Agreement that are either now known to the Commission or may be discovered.

14. This Agreement does not bind the Commission or restrict the remedies available to it concerning any future violations by Licensees of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms of this Agreement.

15. All parties agree to pay all their own fees and expenses incurred as a result of this case, its settlement or any litigation.

16. The parties to this Agreement understand that the Missouri Real Estate Commission will maintain this Agreement as an open record of the Commission as provided in Chapters 339, 610 and 324, RSMo.

17. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

18. Licensees, together with Licensees' heirs and assigns, and Licensees' attorneys, do hereby waive, release, acquit and forever discharge the Commission, its respective members and any of its employees, agents, or attorneys, including any former Commission members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof to be void or unenforceable.

19. If no contested case has been filed against Licensees, Licensees have the right, either at the time the Settlement Agreement is signed by all parties or within fifteen days thereafter, to submit the Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the Settlement Agreement constitute grounds for denying or disciplining the licenses of Licensees. If Licensees desire the Administrative Hearing Commission to review this Agreement, Licensees may submit this request to: **Administrative Hearing Commission, United States Post Office Building, P.O. Box 1557, 131 West High St., Jefferson City, MO 65102.**

20. If Licensees have requested review, Licensees and Commission jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining

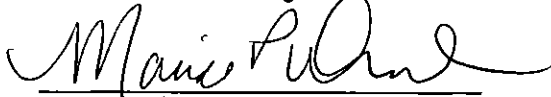
Licensees' licenses and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensees' licenses. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensees' licenses, the agreed upon discipline set forth herein shall go into effect. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the Commission may proceed to seek discipline against Licensees as allowed by law. If Licensees do not submit the agreement to the Administrative Hearing Commission for determination, the agreement shall become effective fifteen (15) days following the signature of the Commission's Executive Director.

LICENSEES

COMMISSION

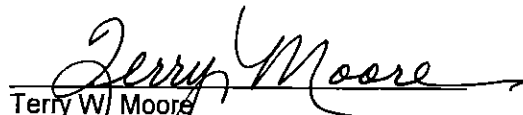


Winkler Homes LLC
Marise Winkler, Designated Broker



Marise Winkler

Date 3-5-19



Terry W. Moore
Executive Director
Missouri Real Estate Commission

Date MARCH 15, 2019

THIS CHECK IS VOID WITHOUT A GREY & BURGUNDY BACKGROUND AND A CUSTOM MICRO PRINT BORDER - ANHEUSER BUSCH CREDIT UNION

No. 120788

40 8291/2810

Anheuser-Busch
employees
CREDIT UNION
and divisions
AMERICAN EAGLE CREDIT UNION
PURINA CREDIT UNION

03/05/19

\$750.00

EXACTLY **750** Dollars **00** Cents

MISSOURI REAL ESTATE COMMISSION
RE WINKLER HOMES LLC

PAY
TO
THE
ORDER
OF

James Shuler

SIGNATURE HAS A COLORED BACKGROUND, BORDER CONTAINS MICROPRINTING

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